IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: 9.10.2007

Anar Singh and others **...Appellants**

VERSUS

State of Haryana & others **…Respondents**

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

Present: Mr.Ramesh Hooda, Advocate for the appellants

Mr.M.S.Sindhu, DAG, Haryana for respondents

Permod Kohli, J. (Oral)

This Regular Second Appeal is directed against the judgment and decree dated 26.2.2003 passed by the Additional District Judge, Rohtak whereby an appeal preferred by the defendants/respondents has been allowed and the judgment and decree dated 11.4.2002 passed by Additional Civil Judge (Senior Division), Rohtak was set aside and consequently the suit filed by the present appellants was dismissed.

It is admitted case of the parties that a Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was initially issued which was followed by

Notification under Sections 6 and 7 of the Act with respect to the land, subject matter of dispute. The land was sought to be acquired for public purposes, namely, for construction of a link drain under a Scheme initiated by the Government in the year 1984. It is alleged that physical possession of the agricultural land mentioned in the Notification was taken over and proposed drain was constructed at spot. It is also alleged that without completing the acquisition proceedings, land was utilized for the purpose of construction of drain. Under the above circumstances, the appellants/plaintiffs filed a suit for mandatory injunction seeking a direction against the defendants to pay them the compensation for the acquired land alongwith interest at the rate of 24% p.a. The suit was resisted by the State/respondents. However, it has been admitted that the Scheme was formulated for the construction of drain and drain was dug from RD 0213500, but the land owners were not willing to hand over the land and they leveled most of the drains for their own use for agriculture purposes. It was accordingly pleaded that in view of the resistance of the land owners, the Scheme was abandoned and the drain dug by the State does not exist at the spot. During the pendency of the suit, a Local Commissioner was appointed who submitted the report Ex.P5/A wherein it was mentioned that the land is unfit for irrigation and water is still lying in the land. He also mentioned that some of the land has been leveled. On the basis of the report of the Commissioner and the evidence led by the parties, the trial court passed decree for mandatory injunction

in favour of the plaintiffs and directed the defendants (respondents herein) to pay compensation to the plaintiffs alongwith interest at the rate of 24% p.a. vide its judgment and decree dated 11.4.2002. This decree of the trial court became subject matter of challenge before the Additional District Judge, Rohtak who has allowed the appeal vide the impugned judgment and decree dated 26.2.2003 and reversed the findings of the trial court. The First Appellate Court has dismissed the suit primarily on two counts- (1) that the suit for mandatory injunction is not maintainable and (2) that the plaintiffs have the remedy available to them under law under the provisions of the Land Acquisition Act. The First Appellate Court also observed that the defendants are not in possession of the suit property as it was never acquired and the plaintiffs have leveled their land and are reaping their agricultural produce from it, except a portion of it. It was also observed that there is no specific claim regarding that also.

Learned counsel appearing for the appellants submits that the findings of the First Appellate Court are contrary to law. He has stated that since the proceedings under the Land Acquisition Act were abandoned, the civil suit is maintainable and the plaintiffs were entitled to compensation. It was, however, stated that during the pendency of the appeal, the plaintiffs/appellants have been paid the compensation, the money has been paid on patta lease basis but interest has not been paid. In so far as the payment of compensation is concerned, it might have been paid by the Government for utilization of the land for the period the

drain was constructed. In so far as the payment of interest is concerned, since the land has not been acquired, no such interest is payable in the present appeal. If the plaintiffs have any claim of interest for wrong utilization of their property, they are at liberty to seek appropriate remedy available to them under law. Insofar as the findings of the First Appellate Court are concerned, the same are absolutely correct. Even if the land of the plaintiffs was wrongfully taken over by the State, the remedy was to file suit for damages/compensation and no suit for mandatory injunction lies, in view of the specific provisions contained in Section 41 of the Specific Relief Act. I find no legal or factual infirmity in the impugned judgment and decree of the First Appellate Court.

In view of the above, I find no merit in this appeal which is accordingly dismissed.

(PERMOD KOHLI)
JUDGE

9.10.2007
MFK

NOTE:Whether to be referred to Reporter or not: NO